

REMARKS

Applicant appreciates the thoroughness of examination afforded the present application. In response to the rejection imposed under 35 U.S.C. §112, second paragraph, claims 13, 27 and 30 are amended to include the full wording of the previously abbreviated terminology, i.e., CTI and SQL. As both of these abbreviations are well known in the relevant art to stand for the terms now spelled out, the amendment does not add new matter and entry thereof and withdrawal of the corresponding rejections are respectfully requested. However, it is believed that the Examiner's application of the cited art in his formulation of the outstanding rejection of the claims is based on a mistaken interpretation of the references. In particular, whereas some of the terminology cited by the Examiner appears in the cited references, such terminology, when taken in context, fails to suggest applicant's claimed invention.

As previously argued by applicant:

Thus, while Glowny uses metadata including CTI data to locate a targeted telephone call, it fails to describe or suggest using such data to select some subset of audio segments that are then subject to being searched to determine if one or more contain certain specified content. In particular, Glowny alone or in combination with Clements fails to describe or suggest the subject matter of the independent claims as presently amended including: ... [repetition of claim limitations for claims 1, 15, 16, 29 and 30].

The Examiner responded that:

The Examiner directs the Applicant to the above corresponding rejections of these claims. In summary, Glowny can reassemble a call stored in segments (a subset of the audio data stored) using metadata (§0044), and Clements performs searching on phonetic search tracks (p. 2, §High-Speed Phonetic Searching) and is compatible with metadata (p. 1, §Introduction, Infusion creates an index that links text descriptors...). The combination of Clements and Glowny teach the selection of a subset of audio segments for subsequent searching.

While the references individually may mention the terminology and features asserted by the Examiner, in context the references teach away from the claimed invention. In particular, as previously asserted, Glowny fails to describe or suggest using metadata data to select some subset of audio segments that are then subject to being searched to determine if one or more

contain certain specified content. Instead, as recognized by the Examiner, Glowny uses the metadata to reassemble a call stored in segments.

To address the deficiency of Glowny, the Examiner now applies Clements for teaching the use of metadata. However, the context of the mention of metadata is in describing a deficiency of the prior art to adequately address “distance learning modules” wherein certain large “systems typically associate each media segment with various metadata – including title, topic, date and time, and other descriptive information such as keywords to facilitate searching and retrieval.” Clements continues, **dismissing** the use of metadata as too costly, describing instead the suggested high-speed phonetic searching technique:

*In the preparation of distance learning modules, tools such as Infusion [1] greatly reduce the time, effort, and cost of production. Such materials are by their very definition multimedia and as such do not readily lend themselves to access tools specifically formulated for text. For large, high budget environments, commercially available Digital Media Asset Management (DMAM) systems ingest, organize, search, and retrieve collections of media in an effective, efficient, and economical manner. **Such systems typically associate each media segment with various metadata** – including title, topic, date and time and other descriptive information such as keywords to facilitate searching and retrieval. Infusion similarly creates an index that links text descriptors such as PowerPoint slide content and outlines directly to time internals in the video. Rarely, however, do instructors only say the words that appear in the sketchy text materials. Equations are another example of difficult text retrieval. Further, in many distance learning environments, the instructor may simply talk with a hand-written pad or a white board for displaying text. Were a closed-caption signal available, searching based on oral content would be possible. However, **closed-captioning requires hundreds of dollars per hour to produce and adds production delays. The same is true for manual addition of meta-data and time-stamps. The solution to this retrieval problem described in this paper is based on the technique of vocabulary independent word-spotting (Phonetic Search).** An index is created in real time as the materials are being recorded. The search of this index for arbitrary words and phrases can take place at speeds of of 72,000 times faster than real time (20 hours searched per second) on normal desktop computers. Such a system has been implemented and tested within the Infusion production tool. The solution described is largely a DSP application and as such, it is appropriate that the first set of course materials to demonstrate the of this method is "Introduction to DSP."*

Clements mentions metadata as an unsatisfactory basis for searching distance learning modules. Thus, instead of commending the use of metadata, the article **teaches away** from the use of metadata for searching. Certainly, there is no suggestion that metadata be used to select audio segments that are then subject to being searched. Since, as previously urged and repeated above, Glowny's description of reassembling a call stored in segments neither teaches nor suggests the use of using metadata to select some subset of audio segments that are then subject to being searched, the applied art, even if combined would fail to defeat patentability of the pending claims.

Further, applicant again urges that the references are not properly combinable under 35 U.S.C. §103(a) for lack of motivation for making the asserted combination. To the contrary, as Clements dismisses the use of metadata, instead suggesting the use of his phonetic searching technique, one skilled in the art would be taught NOT to use metadata and thereby NOT make the asserted combination. That is, not only does the applied art fail to provide the requisite motivation for making the asserted modification but instead **teaches away** from the combination.

While Glowny mentions using metadata, this is "to help associate a series of events pertaining to the same call" (§10003), there is no suggestion to use this data as required by the subject claims, i.e., to select some subset of audio segments that are then subject to being searched to determine if one or more contain certain specified content. Section 2143.01 of the M.P.E.P. makes clear that the "fact that the claimed invention is within the capabilities of one of ordinary skill in the art is not sufficient by itself to establish prima facie obviousness":

A statement that modifications of the prior art to meet the claimed invention would have been " 'well within the ordinary skill of the art at the time the claimed invention was made' " because the references relied upon teach that all aspects of the claimed invention were individually known in the art is not sufficient to establish a prima facie case of obviousness without some objective reason to combine the teachings of the references.

M.P.E.P. §2143.01 Suggestion or Motivation To Modify the References [R-2] - 2100 Patentability.

Taking into "account only knowledge which was within the level of ordinary skill at the time the claimed invention was made" does not obviate the need for the prior art to supply motivation for making the combination. While the Examiner takes the position that "Clements supports the use of metadata during search" the article actually teaches away from the use of metadata, suggesting that it is too costly a technique to be effectively employed. Further, even if this were not the case, the generalized mention of metadata in connection with distance learning modules is insufficient to motivate one skilled in the art to employ such a technique as required by applicant's claims including identifying a set of audio segments using such data.


In conclusion, for the reasons presented, the outstanding rejection of the claims under 35 U.S.C. §103(a) is believed to be improper and withdrawal thereof is respectfully solicited.

Further, as the present amendments to the claims address issues of form thereby overcoming the outstanding rejection under 35 U.S.C. §112, second paragraph and/or placing the claims in better form for appeal, entry of the present amendment in accordance with 37 C.F.R. §1.116 is respectfully requested.

Applicant concurrently submits a Petition for a (3) Three-Month Extension of Time and the small entity fee of \$510.00. If any further fees are due, please charge our Deposit Account No. 06-2375, under Order No. 436.006/10315734 from which the undersigned is authorized to draw.

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Respectfully submitted,

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